United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

525

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

United States of America	)	
v.	)	No. 23,774
Gregory L. Reaves,	)	Criminal 754-69
Appellant	)	

BRIEF FOR APPELLANT

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INDEX

TABLE OF CASES AND CITATIONS

STATUTES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States of America v. Gregory L. Reaves, Appellant	C. A. No. 23,774 Criminal 754-69

BRIEF FOR APPELLANT

Statement of the Issues

The issue presented by this appeal is:

Whether Appellant is entitled to a new trial because the Trial Court erred in denying a motion to suppress, and admitting into evidence, appellant's statement which had been improperly obtained from Appellant.[1/]

References and Rulings

The ruling of the District Court denying Appellant's Motion to Suppress Appellant's Statement appears at pages 333-335 of the transcript of the hearing on the Motion. The ruling admitting the appellant's statement into evidence appears in the trial transcript at page 477..

[1/] Rule 8(d) statement. This case has not previously been before this Court.

Statement of the Case

This is an appeal in forma pauperis from the judgment of the United States District Court for the District of Columbia, dated September 19, 1969, convicting Appellant of second degree murder and several counts of armed robbery, robbery, assault with a dangerous weapon and assault upon a police officer with a dangerous weapon and sentencing him on November 5, 1969, under § 5010(c) of Title 18 of the Youth Correction Act to a term of ten years. This Court has jurisdiction under § 28 USC 1291.

Appellant was indicted on 16 counts, including first degree murder (felony) under Title 22 of the District of Columbia Code, § 2401, armed robbery, robbery, assault with a dangerous weapon, assault on a police officer and carrying a dangerous weapon, and was found guilty by the jury of second degree murder, armed robbery, robbery, assault with a dangerous weapon and assault on a police officer on July 14, 1969.

Summary of Evidence

To the extent relevant to this appeal, the evidence may be summarized as follows:

On May 7, 1968, four armed men held up a drugstore on South Capitol and Atlantic Streets in the District of Columbia (Tr. 121/456).[2/] During the course of this armed robbery, an

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[2/] References to "Tr." are to the trial transcript and "Motion Tr." are to the transcript of the hearing on Appellant's Motion to Suppress his written statement.

employee of the store sought to take away a gun from one of the robbers and was shot and killed by another (Tr. 214).

The owner and three employees testified to the circumstances of the robbery and killing, but none identified defendant as one of the gunmen (Tr. 170, 217, 218, 225). Similarly, the officer who arrested one of the gunmen on the scene was unable to identify defendant (Tr. 267). Nor were three witnesses whose testimony was stipulated (Tr. 243-247).

At the trial three police officers testified as to appellant's arrest and to subsequent interrogation. Each testified they had in turn warned defendant as to his rights by reading P.D. Form 47 and/or P.D. Form 54. One testified that he had taken a written statement from Defendant, which Defendant had signed and in which Defendant admitted participation in the robbery and gave details (Tr. 475 ; Gvt. Exh. 19). Appellant's statement was admitted in evidence over objection of the defense counsel (Tr. 477).

The Government conceded that defendant was not the person who killed the employee (Tr. 102).

There were no defense witnesses and defendant did not testify (Tr. 523).

Prior to trial defense counsel filed a Motion to Suppress Appellant's Statement which the Court denied after a three-day

hearing at which police officers, a psychologist from Saint Elizabeth's Hospital and appellant testified.

At the hearing on the Motion to Suppress, Officer Fickling testified that he had arrested the appellant whom he knew to be only eighteen (Motion Tr. 10) on May 10, 1969, on the charge of alleged robbery - rape at a rental office (Motion Tr. 9); and that at the time of arrest he had read to appellant P.D. Form 47 warning the appellant of his rights (Motion Tr. 8). He further testified that he had taken appellant to the 11th Precinct where he testified he read to appellant Form P.D. 54 and appellant had signed it (Motion Tr. 11). This warning was, however, with reference to the robbery-rape charge. Before any questions were asked, Officer Fickling called the sex squad (Motion Tr. 12) who told him the Defendant was wanted by the homicide squad where Officer Fickling then took appellant (Motion Tr. 13).

Appellant testified that at the time of his arrest, he was eighteen (Motion Tr. 145) and had completed only the 8th grade and was a drop out from school (Motion Tr. 145). He recalled Officer Fickling advising him of his rights at the time of the arrest on the robbery-rape charge (Motion Tr. 149). He had no recollection of signing Form 54 at the precinct, although he was willing to concede that he may have done so if Officer Fickling said so (Motion Tr. 150).

With respect to his arrest for felony murder at the homicide office, appellant testified that when told that he was charged with first degree murder and he was told of his rights, he said he didn't know anything about any murder and asked "what is this, what kind of murder, who was I supposed to have killed?" (Motion Tr. 152). He further stated that he was told by a police officer that because he was involved in a robbery where a man's life had been taken that he was just as guilty as the man who had pulled the trigger (Motion Tr. 152). On direct examination, he further testified as follows:

"Q. Was there a conversation at that time about a lawyer?

"A. Yes, sir.

"Q. What was said to you about a lawyer?

"A. Well, at first one of the officers asked me did anybody tell me about my rights. I said yes. I said Officer Fickling told me I didn't have to say nothing to nobody if I didn't want to. He said I could have a lawyer if I wanted one. He said, 'Do you want a lawyer?' I said, 'Do you think I need a lawyer?'

"Q. Who did you say that to, and when?

"A. I said that to one of the Homicide Squad detectives. This was right after they said that they was informing me of my rights.

"Q. What response if any was made to your question?

"A. Well, the officer just said he was informing me of my rights. When he asked me did I want a lawyer and I asked him did he think I needed a lawyer, he said no. He said, 'All we want to do is question you.'

"And another officer came up and said they wanted to ask me to come to the back of the office."(Mot. Tr. 153-154)

He further testified that in the back room the officers told him of the part he was supposed to have played in the robbery, of the clothes he was supposed to have been wearing, of the car used, where the gun was obtained, where he was supposed to have hidden out after the robbery and that he was told that there was no sense in his lying that they "knowed he was involved and that the best thing that he could do was cooperate with them because he didn't kill and he wasn't the trigger man." (Motion Tr. 156). He also said that they showed him various pictures. And that he signed the statement without reading it because:

"A. I was told to sign it. They handed it to me and said, 'Gregory, do you understand that you can have a lawyer if you want one?' I said, yes, sir. They said, 'Well, sign right here if you understand.' I did that. They picked the paper up.

"Q. Why?

"A. I was told to. They picked the paper up. They said, 'Now, sign your name right beside where it says Gregory L. Reaves.' He pointed to the bottom and said 'sign your initials.' I signed my initials. He lifted it up and said 'sign your name over where it has been typed.' I did that.

"Then everything changed. Things wasn't going too roughly then." (Motion Tr. 157 - 158).

Officer Chaillet, a homicide detective, testified that he met appellant at the Homicide Squad Room; on being introduced by Officer Fickling, he shook appellant's hand and then told appellant that he was under arrest for 1st degree murder and then read P.D. Form 47 to which defendant responded "I understand" after each paragraph (Motion Tr. 43).

None of the officers present in the large squad room recalled hearing the defendant ask, "Do I need a lawyer?" (Motion Tr. 21, 44, 47, 102). Officer Chaillet testified that he did not tell the defendant he didn't need a lawyer (Tr. 44). However, he did testify that after he had read P.D. 47, in response to defendant's question "why he was being charged with murder if I didn't kill anyone", he explained to defendant the felony murder rule in the District of Columbia

(Motion Tr. 45, 51, 52, 53) and other officers confirmed that an explanation of felony murder had been given (Motion Tr. 22, 92, 102).

With respect to what took place in the back room, Detective Chaillet and Seibert testified that appellant had been warned of his rights by the reading of P.D. Form 54, that he had signed such form (Motion Tr. 53-55, 104) and that he had further signed the statement admitting his involvement (Motion Tr. 66, 101).

A psychologist testified that he had examined appellant and on the basis of principally a Rorschach test which he admitted was generally known as a personality test (Motion Tr. 209) estimated him to be above/in average intelligence (Motion Tr. 266).

On the basis of the foregoing, the Court held (Motion Tr. 335) that the statement had been given voluntarily and that appellant had knowingly waived his rights after proper warnings had been given to him (Motion Tr. 335). The Court further concluded that the police officers had not told appellant that he did not need a lawyer (Tr. 332-333). The Court accordingly denied the Motion to Suppress (Motion Tr. 335) and at the trial the statement was admitted in evidence (Tr. 477).

ARGUMENT

THE CONDUCT OF POLICE OFFICERS IN FAILING TO ANSWER APPELLANT'S QUESTION "DO I NEED A LAWYER?" RENDERED APPELLANT'S STATEMENT INVOLUNTARY AND INADMISSABLE

The portion of the transcript particularly relied upon by Appellant in this argument are Motion Transcript pages: 22, 44, 45, 47, 51-53, 102, 152-153, 166, 332-335, 403.

The circumstances in this case raise a question whether the requirements of Miranda v. United States, 384 U.S. 436 (1966) can be carried out "in form" but denied in fact by conduct, if not words. As the Court said in Frazier v. United States, App. D.C., No. 21,426, decided March 14, 1969, note 24,

* * *

> "A police warning to be effective, must be given with proper solicitude for actual understanding. Moreover, a waiver made in the coercive atmosphere of police custody is less likely to be voluntary than one made before a commissioner. Thus the Government carries such a weightly burden of proving waiver in cases involving confessions to the police. But irrespective of who gives the warnings or takes the confessions, the ultimate question is whether the waiver is voluntary in the full sense of the word." 3/

* * *

3/ Cf. Pettyjohn v. United States, U.S. App. D.C. No. 21,666, decided May 16, 1969, page 7, note 9.

The record shows that appellant when brought to the Homicide Office was told that he was being arrested for first degree murder and that after PD form 47 was read to him, he expressed confusion as to why he was being accused of killing someone. In this context of an eighteen-year-old confronted by police officers, placed under arrest for first degree murder two significant events took place:

1. The police officer sought to explain to him the concept of felony-murder (Mot. Tr. 45, 51, 52, 53).

2. Defendant asked if he needed a lawyer. (Mot. Tr. 152-153, 166).

The record is not in dispute that appellant asked this question at that time. Police officers present did not deny that the question was asked, but said that they had no recollection of it. (Mot. Tr. 22, 44, 47, 102).

The record is in dispute as to whether the officers made an oral response to the question. Appellant testified that he was told that no lawyer was needed. (Mot.Tr. 152-53, 166). Officer Chaillet denied that any such response was made. (Mot. Tr. 44). Were it shown on the record that the police officers had so advised appellant there would be no question that such a response would have vitiated the warning required by Miranda and would require reversal of appellant's conviction, as we take it that the

Government would concede. (Mot. Tr. 333).

The District Court's denial of the Motion to Suppress (Mot. Tr. 332-335) obviously rests on a conclusion that the Miranda warnings coupled with his evident conclusion that no officer had orally told appellant that he did not need a lawyer was a sufficient showing that appellant's rights had been protected.

It is submitted, however, that although the words may not have been spoken, the conduct of the officers in response to appellant's question whether he needed a lawyer should and must be held to be equivalent to a statement that he did not need one. Thus, taking the evidence most favorable to the Government, it is clear that the police officers had embarked upon giving legal advice with respect to the felony murder doctrine and that when asked by appellant whether he needed a lawyer, they did not respond, but ignored the question, obviously treating it as a matter of no substance or inconsequential to appellant and moved on to carry out their interrogation in a rear room of the homicide office.

Of course, why the police officers would take the course they did is understandable. Had they answered appellant's question affirmatively, it would then have inevitably led to terminating any further questioning of appellant until a lawyer was obtained. By remaining silent, however,

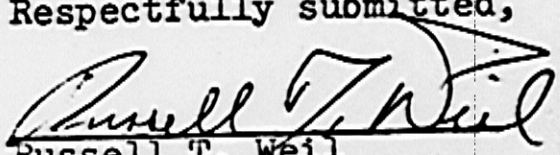
the officers could hope that appellant's will would weaken, as it did (Not. Tr. 403) and that if they pressed, that they might gain the answers, as in fact happened.

Under the circumstances of this case involving an eighteen-year-old of average intellectual capacity confronted with a felony murder charge and a possible death penalty, justice would require that conduct as well as words be fair and not misleading. Once the question was asked - "Do I need a lawyer?" - the only proper response was a direct answer, "Yes, you do" and not evasion. In ignoring the question and going ahead as if it was a matter of no substance or inconsequential to appellant they were transgressing appellant's constitutional rights just as much as if they had advised him orally in specific words that he did not need a lawyer and was not entitled to one. That subsequently, appellant was again told his rights and thereafter after a short period of continued denial (Mot. Tr. 403) he gave a statement, does not vitiate the circumstances that had the proper response been given when the question "Do I need a lawyer?" was asked, appellant surely would have insisted on a lawyer with the probability that the incriminating statement would not have been made.

CONCLUSION

Appellant's conviction should be reversed and the case remanded to the District Court for further trial with the statement of appellant excluded.

Respectfully submitted,



March 10, 1970

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